

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JOHN F. KNIGHT, JR., et al.,

**Plaintiffs and Plaintiffs-
Intervenors,**

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

THE STATE OF ALABAMA, et al.,

Defendants.

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**Civil Action No.
2:83-CV-1676-HLM**

**SETTLEMENT AGREEMENT
BETWEEN THE KNIGHT-SIMS PLAINTIFFS AND
DEFENDANT UNIVERSITY OF SOUTH ALABAMA**

I.

Purpose and Basis of the Agreement

This Settlement Agreement (hereinafter referred to as "Agreement") is entered into by John F. Knight, Jr., and Alease S. Sims, et al., on behalf of themselves and the plaintiff class they have been

certified to represent, and by defendant University of South Alabama (hereinafter referred to as “defendant University”). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join defendant University in requesting that the Court enter a judgment finally dismissing the claims against defendant University in this action.

Defendant University acknowledges that since Court’s July 12, 1985, entry of the Consent Decree to which defendant University was a party, it has been required to implement certain actions consistent with the objectives of the Fourteenth Amendment and Title VI. Defendant University further acknowledges that since the entry of the Court’s 1991 Remedial Decree, all defendants have been enjoined from maintaining vestiges of *de jure* segregation and from engaging in practices which have the effect of impeding the desegregation of the state’s institutions of higher education. Since the Consent Decree was entered into by the defendant University in 1985, substantial progress in conditions, policies and practices at defendant University has been achieved. The parties agree that this progress should continue. The parties further agree that continued good faith efforts to enhance diversity should continue, and

that continued progress does not depend on continued federal court supervision. It is in this spirit that the parties have reached this Settlement Agreement.

Applicable desegregation law requires the Court to determine whether defendant University has complied in good faith with the Consent Decree and whether through that compliance any remaining vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. By entering into this Agreement, the Knight-Sims plaintiffs acknowledge that defendant University has satisfied this legal burden. Similarly, by entering into this Agreement, defendant University pledges to continue to make good faith efforts to further the substantial progress toward greater diversity in student, faculty, and administrative populations of the University community that has been achieved over the course of this litigation. To that end, this Agreement's primary focus is on continuing to improve African-American participation in Alabama's system of public higher education. Without limiting its agreement to continue this progress in all aspects of its institutional life, defendant University agrees to take the

following specific steps.

II

African-American Representation on the Faculties and at the EEO-1 Administrative Level of Defendant University

1. Defendant University agrees that it will develop and implement a Strategic Diversity Plan. Development of the Strategic Diversity Plan will commence no later than the date this Agreement is finally approved by the Court, and implementation of the Plan will begin no later than one year later.
2. Defendant University will develop and tailor its Strategic Diversity Plan to its own institutional circumstances, utilizing best practices that are being developed nationally and complying with the relevant legal and constitutional guidelines. However, at a minimum, defendant University agrees as follows:

a. Defendant University will include representatives of African-Americans on its campus in the development and implementation of the Strategic Diversity Plan. African-American student, faculty and staff at defendant University and the Diversity Committee of the University will be requested to nominate representatives to participate in the development of the Plan. The objective will be to make the Strategic Diversity Plan the product of inclusion and consensus. Consistent with applicable law, the parties acknowledge that the educational interest in diversity is conceptually broader than racial and ethnic diversity alone. Nevertheless, in Alabama, where the history and effects of segregation are well known, faculty and EEO-1 administrative level diversity efforts will of necessity include increasing African-American representation.

b. The Strategic Diversity Plan will include the development of dynamic goals and timetables for achieving an increase of African-American members of the defendant University's faculty and administration, not as legally or contractually enforceable quotas but as standard management techniques for determining the Plan's effectiveness. These goals and timetables will be subject to periodic

review and modification in light of experience with implementation of the Plan and changing circumstances. Legal liability will not attach to defendant University for failure to reach its stated goals. Further, a decision by defendant University to implement, continue, or discontinue a particular current or new strategic diversity program or initiative which it identified in its Strategic Diversity Plan will not constitute a breach of this Settlement Agreement. It is up to the administration of defendant University to determine whether a particular strategic diversity program, initiative, or practice complies with the law regarding institutional diversity initiatives and/or is cost effective or otherwise an appropriate program/initiative to continue. Should a court or federal agency disagree with defendant University's interpretation and conclude the law has not been complied with, defendant institution will not be deemed for that reason to have breached this Settlement Agreement.

c. Defendant University agrees that the President, Vice Presidents, and all deans and department heads will be responsible for providing the leadership to create meaningful progress in diversity. Defendant University also agrees that for at least the next five years,

these administrators' performance evaluations will include an evaluation of that administrator's efforts in achieving the objectives of the Strategic Diversity Plan.

d. The Strategic Diversity Plan will provide for African-American representation on all search committees for presidents, EEO-1 administrative level positions, and, to the extent practicable, on all search committees for faculty.

e. The Strategic Diversity Plan will, to the extent allowed by law, require that diversity be an important selection criterion for all faculty and administrative positions.

3. While creation of a new position is not contemplated by the parties to this agreement, defendant University agrees to assign oversight of the implementation of the Plan to a Vice President or other cabinet level administrator.

4. Defendant University agrees that its Strategic Diversity Plan will be endorsed by its Board of Trustees.

5. Defendant University agrees to attend annual conferences, if held, with other defendant universities to review and critique the development,

terms, and implementation of their strategic diversity plans and to exchange information about best practices. Attendees sent by the defendant University will include at least two representatives selected by the defendant University's African-American faculty and administration. Defendant University agrees to post on its web site a report of the annual conference and any recommendations proceeding therefrom, including any minority reports and recommendations.

6. Defendant University agrees to post to its web site by February 1, 2008, and by February 1 of each year thereafter a report on the implementation of its Strategic Diversity Plan that, at a minimum, includes the following:

- a. Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the present;
- b. Racial composition of the students awarded bachelor, graduate and professional degrees;
- c. Racial composition of full-time faculty from 1991 to the present;
- d. Racial composition of presidents, provosts, vice presidents,

deans, department chairs and other EEO-1 level administrators from 1991 to the present;

e. Racial analysis of faculty and administrative positions filled during the year, including the number of African Americans considered for these vacancies; and

f. An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of African-American faculty, EEO-1 level administrators, and students.

III

Dismissal of Action and Settlement Implementation

A. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion will submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court will be requested to direct the giving of notice to the

plaintiff class and to schedule a fairness hearing. In the event the Court declines preliminarily to approve the Agreement, or finds the Agreement does not provide an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement will become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and will request the Court to grant final approval of the Agreement and to enter judgment thereon ("Judgment"). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed. R. Civ. P., with the plaintiff class as previously

defined by the Court;

2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P, and due process, and that the Court has jurisdiction over the class;

3. Find that the Agreement is fair, adequate, and reasonable in all respects;

4. Find that the class representatives, and all class members, have released all claims against defendant University, all as set forth in the Agreement;

5. Order that defendant University will implement the Settlement Agreement;

6. Find that on judicial approval of this Agreement, including the commitments contained herein, the defendant University shall be in full compliance with the law, and that therefore, there are no continuing policies or practices of defendant University, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible, and practical alternatives or remedial measures;

7. Pursuant to Rule 42(b), Fed. R. Civ. P., sever from this action the claims that are pending resolution of the Knight-Sims plaintiffs' appeal from this Court's Orders of October 5, 2004, and February 10, 2005, denying plaintiffs' requests for relief based on said claims; and

8. Dismiss on the merits and with prejudice (i) all claims against defendant University set forth in the complaint, as amended, (ii) all claims against defendant University set forth in the complaint-in-intervention, and (iii) all claims against defendant University of racial discrimination asserted before the Court throughout the pendency and trials of the action including, without limitation, claims of institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement.

This Agreement will become final upon the occurrence of the following events: (i) approval of the Agreement in all respects by the District Court as required by Rule 23(e), Fed. R. Civ. P., and (ii) entry of the Judgment as provided for above.

The term of the provisions of this agreement will be for five years

from the date it is finally approved by the Court. The Agreement will be binding for that term of five years upon the successors and assigns of the parties and shall inure to their benefit.

D. Enforcement.

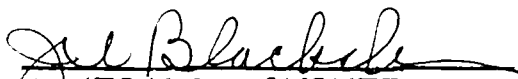
The parties to this Agreement, including all class members, agree that litigation regarding enforcement of the Agreement is counterproductive. If there is a claim that defendant University has not complied with the terms of this Agreement, then the parties agree that resolution of any such allegation should first and foremost be achieved by informal discussions and negotiations between counsel for the Knight-Sims Plaintiffs and counsel for defendant University. Counsel for Knight-Sims Plaintiffs, acting on behalf of the class members, will notify counsel for defendant University of the specific provision(s) of this Agreement that defendant University has allegedly not complied with. Upon receipt of that notice, counsel for defendant University agrees to work within a reasonable time period to respond to that allegation, and if it concedes noncompliance, to make reasonable efforts to cure any alleged breach. Counsel for both parties agree to use good faith efforts

to resolve legitimate disputes regarding differences of interpretation of the Settlement Agreement. If the parties are unable to resolve the matter, they agree to select a mediator acceptable to all parties to reach a resolution to the issue. Each party will pay for its own fees and expenses associated with any dispute regarding compliance with the terms of this agreement.

This 4th day of October, 2006.

For the Knight Sims Plaintiffs

For defendant University of
South Alabama



JAMES U. BLACKSHER
(ASB-2381-S82J)

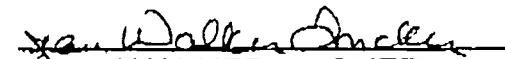
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